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## Delaware Updates Corporate Statute for the Electronic Age

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The Delaware General Corporation Law statute has been amended, effective July 1, 2000, to permit Delaware corporations to take fuller advantage of email and other technological advances.

Delaware has the best-known and most important corporate law in the United States. A majority of all public companies, and over a quarter million private companies, are incorporated in Delaware. With these amendments, Delaware has resolved some lingering uncertainties, and enabled Delaware corporations to utilize modern technology in their corporate governance and communications with stockholders.

### **Scope of New Provisions**

The new provisions of Delaware law affect electronic communications relating to stockholder meetings, director consents and meetings, stockholder notices, and stockholder consents and waivers.

The amendments define "electronic transmission" as "any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process."

The definition encompasses email as well as other current or future forms of electronic communications. The amendments do not mandate any particular form of technology and are intended to be flexible enough to encompass current and future technology.

The amendments apply only to Delaware corporations. They do not apply to limited liability companies or limited partnerships organized in Delaware.

## **Stockholder Meetings**

The section of the Delaware statute governing stockholder meetings has been rewritten to permit:

- stockholder meetings to be held entirely by remote communication without any physical location;
- stockholders who are not physically present at a meeting to participate by remote communication; and
- stockholders to submit votes by electronic transmission in place of written ballots, provided there is sufficient information to determine that such transmission was authorized by the stockholder.

The existing requirement that the stockholder list be available at the place of the meeting or another specified place in the city where the meeting is being held for ten days prior to the meeting has been deleted. A new provision requires the list to be available for the ten-day period either on a reasonably accessible electronic network or at the corporation's principal place of business. If the meeting is to be held solely by remote communication, the list must be available during the meeting on an electronic network.

The type of materials that inspectors of election may rely on in determining the validity of proxies or ballots sent by electronic transmission has been expanded.

## **Stockholder Notices**

The statute now provides that notices to a stockholder under a corporation's charter, bylaws or Delaware law may be given by electronic transmission if the stockholder has consented to the giving of notice by that particular form of electronic transmission. The amendments do not specify the form of such consent or require that it be in writing.

The amendments state that consents to receive electronic notices may be revoked by written notice. Although consents to receive electronic notices need not be in writing, revocations of those consents apparently must be in writing.

Consent to receive electronic notices is deemed revoked if the corporation is unable to deliver two consecutive electronic notices and such inability becomes known to the corporation or the person responsible for giving notice. However, the inadvertent failure to treat such inability as a revocation of consent will not invalidate the meeting or other action.

## **Stockholder Consents and Waivers**

The statute has been revised to permit electronic stockholder consents in lieu of meetings. However, electronic consents must be reduced to paper and delivered as mandated by the statute unless the Board provides otherwise.

Stockholders may now provide waivers by electronic transmission of any notice required under a corporation's charter, bylaws or Delaware law.

## **Director Consents and Meetings**

Unless prohibited by the corporation's charter or bylaws, directors are now permitted to take actions by consent, or to submit resignations, by electronic transmission.

Unless prohibited by the corporation's charter or bylaws, directors are now permitted to hold meetings by any form of communications equipment, so long as all directors can hear each other. This is a broadening of the former provision permitting meetings by telephone conference call and "similar" communications equipment.

## **Conclusions and Action Items**

Coupled with the SEC's rules relating to the electronic delivery of documents under the federal securities laws ([discussed in a recent Internet Law Group publication](#)), the new Delaware provisions will enable public Delaware corporations to communicate more quickly and efficiently with their stockholders. Private Delaware companies will also be able to benefit from the statutory changes, especially those changes relating to stockholder consents and notices. Both public and private Delaware corporations will need to review and revise their charters and bylaws to take full advantage of the new legislation.

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